

COUNCIL CONFERENCE MINUTES

September 8, 2009

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:30 p.m. in the Municipal Building Conference Room on the 8th day of September, 2009, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Atkins, Butler, Dillingham, Griffith, Kovach, Quinn, Mayor Rosenthal

ABSENT: Councilmembers Cubberley and Ezzell

CHANGE ORDER NO. TWO TO CONTRACT NO. K-0809-105 WITH NASH CONSTRUCTION COMPANY, INC., DECREASING THE CONTRACT AMOUNT BY \$25,920.19 FOR THE 36TH AVENUE AND MAIN STREET WEST IRRIGATION, LANDSCAPING, LIGHTING, AND STREET AND PARKING IMPROVEMENT PROJECT AND FINAL ACCEPTANCE OF THE PROJECT.

Mr. Bob Hanger, City Engineer, said the majority of the work for the 36th Avenue N.W. Paving, Lighting, Irrigation, and Landscape Improvements had been done in the Sam's Club Parking Lot on West Main Street. He said Change Order No. Two decreases the contract amount by \$25,920.19 because anticipated asphalt quantities had been reduced. He said the job had been completed and all work had been inspected and approved by Staff.

Items submitted for the record

1. Memorandum dated August 10, 2009, from Lonnie Ferguson, Capital Projects Engineer, to Honorable Mayor and Councilmembers
2. Change Order No. Two to Contract No. K-0809-105

Participants in discussion

1. Mr. Bob Hanger, City Engineer

DESIGN MODIFICATIONS SUBMITTED BY THE BNSF RAILROAD REGARDING THE ROBINSON STREET RAILROAD UNDERPASS PROJECT.

Mr. Steve Lewis, City Manager, said this project began after voters approved a bond issue to pay for the project on March 29, 2005. He provided a brief history of the progression of the progress beginning with the environmental assessment that was required by Federal law to be completed before the City could obtain the rights-of-way for the project. He said all rights-of-way have now been obtained and 90% of the design plans have been completed. He said the City was in the process of working on a three-way contract between the City of Norman, BNSF Railroad, and the Oklahoma Department of Transportation to determine cost participation of all parties and how the crossing would be operated during construction. He said during the process, it was discovered that BNSF Railroad had some major design changes to be implemented.

Mr. Shawn O'Leary, Director of Public Works, said all land acquisition had proceeded smoothly, all the buildings are down, and utility relocations are presently underway. He provided a map of the existing approved project and an artist's rendering of the enhancements approved by Council. He said the project was on schedule and Staff has worked diligently through the process. The bid letting is scheduled for January, 2010. He said the grade separation was, in essence, a bridge for the railroad with the road being routed under the bridge. He said the three-way partnership was between the City of Norman, BNSF Railroad, and ODOT who was administering the funds and the construction of the project.

He said in 2006 the City of Norman requested a 25 mile per hour (mph) shoofly design speed and BNSF railroad had responded that a 40 mph shoofly design speed would be required. In June of 2008, City Staff, BNSF, and ODOT

had met to review the project plans, which were 30% complete and railroad officials said there were no exceptions to those plans. Another meeting was held June 1, 2009, to review the plans which were 60% complete. He said a few weeks after this meeting, BNSF officials notified the City that two major design changes were being considered. He said Staff had been working very closely with BNSF since that time to find a solution to these changes. He said he, along with Mayor Rosenthal and the City Manager, had gone to Kansas to meet with railroad officials on August 13, 2009, to appeal these design changes.

The existing approved project provides two tracks around the bridge, one for the siding and one for the main line, to be used for the 18 month period that the grade separation is being completed. These tracks are referred to as a two-track shoo-fly, which is a temporary way to move the trains around the project. In the approved plan, the City had proposed a substructure for a future main line. The new design changes requested by BNSF are a 55 mph two-track shoo-fly and a third bridge to be completed for the future main line. These changes would require the City to obtain additional rights-of-way and revise the Environmental Assessment because the width of the project would be increased. The project would be delayed by at least six months and costs would increase by as much as \$1,285,000. The engineer, HNTB Corporation, came up with Alternative No. Two which would provide a 55 mph, one-track shoo-fly, shorten the siding temporarily, two RR bridges, and a future track substructure. This alternative would not need additional rights-of-way, revision to the Environmental Assessment, and would only delay the project for two weeks. This alternative reduced costs by \$30,000. BNSF rejected Alternative No. Two and provided Alternative No. Three. Alternative No. Three provides a 55 mph one-track shoo-fly, shifts the siding north, provides one main bridge, and a second bridge structure. This alternative will not require additional rights-of-way or revision to the Environmental Assessment. If Council proceeds with this alternative, the project will be delayed for three months with a bid letting in April, 2010, construction beginning sometime in June or July of 2010, and the project costs to the City will be \$1.4 million which includes additional engineering design costs and railroad and bridge construction. Mr. O'Leary said the only other option would be continuing negotiations with BNSF and to explore other options. He said if the City does not move ahead, there will be additional delays, the possible loss of stimulus funds in the amount of \$1.4 million, possible increase of project costs, and other railroad issues.

He said the current estimate of construction is \$25,942.831 with a surplus of \$88,874 totaling \$26,031,805. Funding sources are split up as follows:

<u>FUNDING SOURCE</u>	<u>AMOUNT</u>	<u>PERCENTAGE</u>
Federal ARRA	\$1,339,297	5%
Federal ACOG	\$2,808,000	11%
Federal Earmark	\$8,999,001	35%
Bond Fund	\$9,369,513	36%
Capital Fund	\$2,351,921	9%
Federal TCSP	\$1,164,073	4%

He outlined several ways funding could be provided for the project. He said Federal Stimulus funds available as of today are \$1,339,297. He said ACOG is currently considering a process to distribute remaining Stimulus funds and at the ACOG meeting of September 10, 2009, the City of Norman will be asking that the allocation of net funds left over after the overlay projects be used for this project. He said BNSF is required by Federal Government to spend 5% of their own funds for any railroad grade separation project and 5% of the project is \$265,000. The BNSF construction estimate received on Friday has an 8.4% contingency built into the project which equals approximately \$160,000. He said the HNTB construction estimate has a 20% contingency built in which equals \$2,840,000. He said Staff anticipates completing all of the Street Maintenance Projects for this year and having \$1 million left over.

Mr. Lewis said one option was to pursue a TIGER Grant Application which was originally to be used for commuter rail. He said it was also a possibility that additional funding is available through ODOT because the project is a State road and ODOT has recognized the City's diligence to bring this project to reality. He said ODOT usually

prepares the three-party agreement between the City, ODOT, and BNSF and City Staff has prepared the document which is very unusual. He said this agreement will be coming to Council in the near future and that ODOT is waiting for the City to resolve their issues with BNSF.

Mr. O'Leary said while the changes will increase the cost of the project, this is an incredible time in today's market to be bidding a project. He provided comparisons on several projects where favorable bids were received. He said Engineering News Report has quoted costs have only increased 0.3% in 2009. Material costs have bottomed out and may be making a slow increase.

If Design Alternative No. Three is approved by Council; the next step is an amendment to the contract with HNTB Corporation for the design changes which would be included on the September 22, 2009, City Council Agenda. He said a transfer of funds to the project accounts will be required at that time to cover the increased cost.

Mayor Rosenthal asked if the City has received an estimate from BNSF for the cost of the shoofly. Mr. O'Leary said Staff has received the track estimates but not the costs of the signal and after working with HNTB, came up with the \$1.2 million cost estimate that was previously stated; however, no final numbers have been received.

Councilmember Butler asked how cost estimates for the City are figured into the plans that have already been prepared. Mr. O'Leary said the local entity builds the structure, performs the earthwork for the embankment, and installs the drainage system. He said the railroad installs the rail, signals and railroad equipment. He said the railroad bills the entity for any work done by BNSF.

Councilmember Kovach asked if high-speed rail or commuter rail coming into Norman has had any impact on this project. Mr. O'Leary said it was possible that the new requirement of a second rail could have had something to do with a new rail system.

Councilmember Kovach asked if any TIGER Funds became available would the City be able to tap into the funds to use for the second rail. Mr. O'Leary said it was not probable because those grants are used for Capital Projects.

Councilmember Quinn asked since the project has been delayed, would the schools have time to get used to the construction before school starts in 2010. Mr. O'Leary said this project builds a four-lane shoofly adjacent to Robinson Street all the way around the project and Stubbeman would remain open most of the time. He said traffic on Robinson should not be affected and starting the project in June or July might allow the City to get the shoofly done before school starts.

Councilmember Quinn asked if the City had any control over what BNSF did within Norman City limits and Mayor Rosenthal said the City had no control. She said the three-way agreement would be the City's security against any future changes to the contract and it was critical to get it finalized.

Mr. O'Leary said after Council has made the decision to use Alternative No. Three, ODOT will firm up the agreement to allow it to be on a City Council Agenda in the near future.

Mayor Rosenthal invited any comments from Council about using surplus General Obligation Funds designated for street maintenance projects. Councilmember Quinn said the bond issue dictated that the bond funds should be used for streets and felt another source of funding should be identified.

Mayor Rosenthal said she assumed Council had not objections to pursuing other stimulus funds and using them for this purpose or reallocating funds from other City projects.

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Items submitted for the record

1. PowerPoint presentation entitled, "Robinson Street Railroad Underpass Project, BNSF Design Modifications"

Participants in discussion

1. Mr. Steve Lewis, City Manager
2. Mr. Shawn O'Leary, Director of Public Works

The meeting adjourned at 6:15 p.m.

ATTEST:

City Clerk

Mayor